

proprietary information on the chemical and physical properties of the coal.

**PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS**

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AUTHORITY: 30 U.S.C. 1201 *et seq.* and Pub. L. 100-34.

SOURCE: 48 FR 41354, Sept. 14, 1983, unless otherwise noted.

**§ 769.1 Scope.**

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

**§ 769.10 Information collection.**

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

**§ 769.11 Who may submit a petition.**

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an inter-

est which is or may be adversely affected must demonstrate how he or she meets an “injury in fact” test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

**§ 769.12 Where to submit petitions.**

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that area where the Federal lands are located.

**§ 769.13 Contents of petitions.**

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

**§ 769.14 Initial processing, recordkeeping, and notification requirements.**

(a)(1) Within 30 days of receipt of a petition, OSMRE shall determine whether the petition is complete and not frivolous. OSMRE may request other supplementary information that is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSMRE's determination that the petition is complete for further processing.

(2) *Complete*, (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Frivolous*, for a designation or termination petition, means that:

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(i) The allegations of harm lack serious merit; or

(ii) Available information shows that no “mineable” coals resources exist in the petitioned area or that the petitioned area is not or could not be subject to related surface coal mining operations and surface impacts incident to an underground coal mine or an adjoining surface mine (mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1-4(e)(1); and privately owned coal under land owned by the United States).

(b) When the Director finds that the petition is incomplete or frivolous, he or she shall reject the petition with a written statement of reasons and advise the petitioner, via certified mail, that the petition may be reconsidered upon resubmittal with deficiencies cured.

(c) When the Director finds that the petition is complete and not frivolous, he or she shall initiate the petition review and so advise the petitioner via certified mail.

(d)(1) Within 2 weeks after accepting the petition for further processing, OSM shall send a copy of the petition to the authorized officer of the land management agency for the officer’s recommendation on the petition.

(2) The authorized officer of the appropriate Federal land management agency shall furnish a recommendation on the petition to OSM within 30 days of its receipt, if the area covered by the petition has been included in a completed Federal lands review or within 9 months, if the area has not been included in a Federal lands review.

(e) Promptly after accepting a petition for further processing, OSM shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, and any person, known to OSM to have an ownership interest in the property.

(f) Where lands administered by the Department of the Interior and other Federal land management agencies are contiguous or intermingled or where the Department’s resource management could affect resources on the other’s land, the Director of OSM shall

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refer a copy of the petition to the other Federal land management agency and shall consider the agency’s recommendations about designating those lands unsuitable for all or certain types of surface coal mining or terminating such designations.

(g) OSM may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, OSM may issue a decision on a complete and accurate permit application and shall inform the petitioner why OSM cannot consider the part of the petition pertaining to the proposed permit area.

[48 FR 41354, Sept. 14, 1983, as amended at 52 FR 49324, Dec. 30, 1987]

### § 769.15 Intervention.

Up to 3 days before the OSM holds a hearing on a petition under § 769.17, any person may intervene in the proceeding by filing a statement describing how the designation directly affects the intervenor, allegations of facts and supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor’s name, address and telephone number.

### § 769.16 Public information.

(a) Promptly after determining that a petition is complete, the Director shall notify the general public of the receipt of the petition and request submissions of the relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the newspaper providing broadest circulation in the region of the petitioned area, and in the FEDERAL REGISTER. The advertisement and FEDERAL REGISTER notice shall include a description of the boundaries of the petitioned area, the allegations of fact, and information regarding where the petition is available for public review.

(b)(1) Beginning immediately after a petition is filed, OSM shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by OSM with the exception of that information excluded under § 769.16(b)(2). OSM shall make the

record available to the public for inspection free of charge and for copying at a reasonable cost during all normal business hours at its Washington, D.C. office. OSM shall also maintain information in or near the area in which the petitioned land is located; this information shall be available for public inspection, free of charge, and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(2) OSM need not make available to any person or entity the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

#### § 769.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by OSM in deciding the petition.

(b)(1) OSM shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and

intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) OSM shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks prior to the scheduled date of the public hearing in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) OSM may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petitions relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, OSM may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under paragraph (a) of this section with any hearing on the permit application or informal conference held in accordance with section 513(b) of the Act and § 740.13 of this chapter on the permit application. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any lands as unsuitable for surface coal mining operations, OSM shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

#### § 769.18 Decisions on petitions.

(a) In reaching his or her decision, the Director shall use the information and consider the recommendation provided by the Federal land management agency, information provided by other governmental agencies, the detailed statement, when it is prepared under

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§ 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons involved in the proceeding.

(c) If the Director concurs with the recommendation of the surface managing agency, the Director's decision becomes final. If the Director does not concur with the recommendation, he or she shall notify the Director of the surface managing agency within 30 days

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after the public hearing, if any. The decision at the same time will be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

(d) A final decision of the Director or the Secretary is subject to judicial review in accordance with § 775.13 of this chapter and section 526 (a)(2) and (b) of the Act.

### **§ 769.19 Regulatory policy.**

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, any permit or lease shall be conditioned in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.